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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,052	01/12/2004	Chris Beatty	200300107-1	1710

22879 7590 09/26/2006

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FORT COLLINS, CO 80527-2400

EXAMINER

SPEER, TIMOTHY M

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/756,052

Applicant(s)

BEATTY ET AL.

Examiner

Timothy M. Speer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 01/12/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election

1. Applicant's election of Group II, claims 26-36, in the reply filed on 06/28/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Information Disclosure Statement

2. The information disclosure statement filed 01/12/04 has been considered and made of record. A copy of the 1449 initialed, dated and signed by the Examiner is included herewith.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 26-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Liu (USPN 6,440,238).

5. Liu teaches mixed metal oxide layers, e.g., yttria stabilized zirconia, formed on a substrate (col. 9, lines 10-51, for instance). The process limitations recited in the present claims are not being given patentable weight, since applicant is claiming a product and not a process. It is patentability of the claimed product that must be established. In the present case, the claimed product is merely a mixed oxide film. The applied prior art reference teaches such a layer and,

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accordingly, it is the Examiner's position that the present claims are anticipated by the applied prior art.

6. Claims 26-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang (USPN 6,251,473).

7. Wang teaches mixed oxide layers, e.g., yttria stabilized zirconia, formed on a substrate (col. 3, line 65 to col. 4, line 63, for instance). The process limitations recited in the present claims are not being given patentable weight, since applicant is claiming a product and not a process. It is patentability of the claimed product that must be established. In the present case, the claimed product is merely a mixed oxide film. The applied prior art reference teaches such a layer and, accordingly, it is the Examiner's position that the present claims are anticipated by the applied prior art.

8. Claims 26-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Barnett (USPN 6,479,178).

9. Barnett teaches mixed oxide layers, e.g., yttria/ceria, formed on a substrate (col. 13, lines 35-50, for instance). The process limitations recited in the present claims are not being given patentable weight, since applicant is claiming a product and not a process. It is patentability of the claimed product that must be established. In the present case, the claimed product is merely a mixed oxide film. The applied prior art reference teaches such a layer and, accordingly, it is the Examiner's position that the present claims are anticipated by the applied prior art.

10. Claims 26-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (USPN 5,494,700).

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11. Anderson teaches mixed oxide layers, e.g., ceria/samaria, formed on a substrate (coo. 6, lines 15-58, for instance). The process limitations recited in the present claims are not being given patentable weight, since applicant is claiming a product and not a process. It is patentability of the claimed product that must be established. In the present case, the claimed product is merely a mixed oxide film. The applied prior art reference teaches such a layer and, accordingly, it is the Examiner's position that the present claims are anticipated by the applied prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Speer whose telephone number is 571-272-8385. The examiner can normally be reached on M-Th, M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Timothy M. Speer



JENNIFER C. MCNEIL
SUPERVISORY PATENT EXAMINER
9/6/06